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Tiffany and Company and Tiffany (NJ) LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY AND COMPANY and)	No. 13 CV 1041 (LTS)(DCF)
TIFFANY (NJ) LLC,)	
)	ECF Case
Plaintiffs,)	
)	DECLARATION OF JEFFREY A.
v.)	MITCHELL IN SUPPORT OF
)	PLAINTIFFS' MOTION FOR
COSTCO WHOLESALE CORPORATION,)	SUMMARY JUDGMENT OR, IN THE
)	ALTERNATIVE, FOR JUDGMENT ON
Defendant.)	<u>THE PLEADINGS</u>

I, Jeffrey A. Mitchell, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice before the courts of the State of New York and the United States District Court for the Southern District of New York, and am a partner of the firm of Dickstein Shapiro LLP, attorneys for Plaintiffs Tiffany and Company and Tiffany (NJ) LLC (collectively, "Tiffany").

2. I respectfully submit this declaration in support of Tiffany's motion for summary judgment dismissing the Counterclaim filed by defendant Costco Wholesale Corporation, or in the alternative, for judgment of dismissal of the Counterclaim pursuant to Fed. R. Civ. P. 12(c).

3. Submitted herewith are true and correct copies of the following:

<u>Exhibit</u>	<u>Description</u>
A	Complaint, dated February 14, 2013 (ECF No. 1);
B	Answer and Counterclaim, dated March 8, 2013 (ECF No. 5);
C	Reply to Counterclaim, dated March 14, 2013 (ECF No. 9);
D	Photographs of the point of sale signs in Huntington Beach, California Costco warehouse;
E	Shirley Brady, <i>Costco CEO: We Shouldn't Have Used Tiffany to Describe Rings [EXCLUSIVE]</i> , brandchannel (Feb. 18, 2013, 9:45 PM), http://www.brandchannel.com/home/post/Costco-CEO-Tiffany-Suit-Email-021813.aspx ;
F	"Tiffany® Setting" Description – from Tiffany and Company website, http://www.tiffany.com/Expertise/Diamond/glossary/define.aspx?img=tiffanySetting& ;
G	Schedule of all trademark registrations of Tiffany;
H	United States Trademark Registration No. 1,228,409 for word mark "TIFFANY";
I	United States Trademark Registration No. 133,063 for stylized mark "TIFFANY";
J	Online descriptions of six-prong engagement rings offered for sale by Costco;
K	Arbitration Decision – <i>Tiffany (NJ) LLC v. La Tondra Moultrie</i> , No. D2009-190 (WIPO Mar. 30, 2009), http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0190.html ;
L	Daphné Anglès & Carol Kino, <i>Picasso's Daughter Says Drawing is a Fake</i> , N.Y. Times, Mar. 18, 2006, at B7, available at http://www.nytimes.com/2006/03/18/arts/design/18pica.html ; and
M	Mike Boehm, <i>Artist settles with Costco</i> , L.A. Times, Oct. 26, 2007, at 25, available at http://articles.latimes.com/2007/oct/26/entertainment/et-costco26 .

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2013 at New York, New York.

s/Jeffrey A. Mitchell
Jeffrey A. Mitchell